

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals
for the Second Circuit, held at the Thurgood Marshall United
States Courthouse, 40 Foley Square, in the City of New York,
on the 9th day of September, two thousand fifteen.

PRESENT: JON O. NEWMAN,
JOHN M. WALKER, JR.,
DENNIS JACOBS,
Circuit Judges.

- - - - -X
DAVID OWENS,
Plaintiff-Appellant,

-v.-

14-2730

ROCHESTER CITY SCHOOL DISTRICT,
Defendant-Appellee.

- - - - -X
FOR APPELLANT: Melvin Bressler, Pittsford, New
York.

FOR APPELLEE: Cara M. Briggs (Edwin Lopez-
Soto, on the brief), Rochester,
New York.

1 Appeal from a judgment of the United States District
2 Court for the Western District of New York (Larimer, J.).
3

4 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
5 **AND DECREED** that the judgment of the district court be
6 **AFFIRMED.**
7

8 Plaintiff-Appellant David Owens appeals from the
9 judgment of the United States District Court for the Western
10 District of New York (Larimer, J.), granting summary
11 judgment in favor of defendants-appellee Rochester City
12 School District. We assume the parties' familiarity with
13 the underlying facts, the procedural history, and the issues
14 presented for review.
15

16 We affirm for substantially the reasons stated in the
17 district court's June 25, 2014 order.
18

19 Where, as here, "a plaintiff seeks to prevent summary
20 judgment on the strength of a discrepancy in qualifications
21 ignored by an employer, that discrepancy must bear the
22 entire burden of allowing a reasonable trier of fact to not
23 only conclude the employer's explanation was pretextual, but
24 that the pretext served to mask unlawful discrimination."
25 Byrnie v. Town of Cromwell, Bd. Of Educ., 243 F.3d 93, 103
26 (2d Cir. 2001).
27

28 It is undisputed that there is no direct evidence of
29 discrimination in the summary judgment record. And it is
30 undisputed that Owens had "attendance issues" in his
31 personnel file, unlike Peter Torchia, who ultimately
32 received the promotion. Owens's claim to be more qualified
33 than Torchia is dubious, given Laniak's virtually un rebutted
34 testimony that Torchia "was and . . . still is the most
35 qualified in the district" for the job. JA 77. But in any
36 event, that purported discrepancy in qualifications could
37 not, standing alone, support an inference of racial
38 discrimination on this record.
39

40 For the foregoing reasons, and finding no merit in
41 Owens's other arguments, we hereby **AFFIRM** the judgment of
42 the district court.
43

44 FOR THE COURT:
45 CATHERINE O'HAGAN WOLFE, CLERK